

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEUTSCHE BANK NATIONAL TRUST  
COMPANY AS TRUSTEE FOR GSR  
MORTGAGE LOAN TRUST 2006-OA1,

Plaintiff,

v.

JACQUELINE M. ARABE, et al.,

Defendants.

Case No. [14-cv-04398-VC](#)

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND**

Re: Dkt. No. 7

On September 30, 2014, Defendants Jacqueline and Arturo Arabe removed this case to federal court. Plaintiff Deutsche Bank National Trust Company ("Deutsche Bank") filed a motion to remand, based on both the untimeliness of the Arabe's Notice of Removal and this Court's lack of subject-matter jurisdiction over the action. As of the date of this Order, the Arabes have not responded to Deutsche Bank's motion. The motion to remand is granted.

In their Notice of Removal, the Arabes claim that they were not properly served in state court, and that the 30-day statutory deadline for filing the notice, *see* 28 U.S.C § 1446(b)(1), had therefore not yet run. But even if service was improper, Arturo Arabe waived any challenge to service when he filed an answer to Deutsche Bank's complaint in state court on August 11, 2014.<sup>1</sup> *See* Cal. Code of Civ. P. § 418.10(e)(3).

Moreover, even if the Arabes' notice were timely filed, this Court lacks subject-matter jurisdiction over the action. Deutsche Bank's unlawful detainer action does not arise under federal law. *See Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009). "Under the longstanding well-pleaded complaint rule . . . a suit 'arises under' federal law 'only when the plaintiff's statement of his own

<sup>1</sup> The Court takes judicial notice of the relevant documents filed in *Deutsche Bank National Trust Company v. Arabe, et al.*, Case No. HG14730249, (Alameda Cnty Sup. Ct., filed June 24, 2014).

1 cause of action shows that it is based upon [federal law]." (quoting *Louisville & Nashville R. Co.*  
2 *v. Mottley*, 211 U.S. 149, 152 (1908)). Federal jurisdiction cannot rest upon an actual or  
3 anticipated counterclaim. *Id.* at 60. And because Arturo Arabe is a citizen of California, Notice of  
4 Removal ¶ 6, the "forum defendant rule" bars removal on diversity grounds. *See* 28 U.S.C.  
5 § 1441(b)(2); *Spencer v. U.S. Dist. Court for N. Dist. of Ca.*, 393 F.3d 867, 870 (9th Cir. 2004).

6 Accordingly, the Court grants Deutsche Bank's motion. The case is remanded to Alameda  
7 County Superior Court.

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9 **IT IS SO ORDERED.**

10 Dated: November 6, 2014



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VINCE CHHABRIA  
United States District Judge